

ASSEMBLY BILL

No. 1767

**Introduced by Committee on Revenue and Taxation (Klehs
(Chair), Canciamilla, DeVore, Jones, and Lieber)**

March 17, 2005

An act to amend Sections 18670, 19950, and 21018 of, and to add Section 19136.7 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1767, as introduced, Committee on Revenue and Taxation. Franchise Tax Board: administration: collections and seizures: erroneous levies: required disclosures.

(1) Existing law authorizes the Franchise Tax Board, as part of its administrative duties with respect to the collection of taxes, to seize assets of a delinquent taxpayer. Existing law authorizes the board to issue an order to specified financial institutions to withhold and remit liquid assets of a delinquent taxpayer in order to satisfy the tax obligations of that taxpayer.

This bill would require a financial institution, in compliance with an order to withhold assets, to liquidate specified noncash assets of a delinquent taxpayer, in a specified manner.

(2) Existing law authorizes a person to file a reimbursement claim against the board for bank charges assessed against that person as a result of an erroneous levy by the board.

This bill would expand this provision to include any 3rd party fees or charges assessed against a person as a result of an erroneous levy, erroneous processing action, or erroneous collection action by the board. This bill would provide that a penalty for underpayment of tax would not apply if the underpayment is based on an erroneous levy,

erroneous processing action, or erroneous collection action by the board.

(3) Existing law generally provides that all taxpayer information obtained by the board is to remain confidential. Existing law provides exceptions to this general requirement, including a provision that requires the board, upon the request of the Department of Justice, a court, or any California law enforcement agency, to provide the address of any person represented to be a person for whom there is an outstanding arrest warrant.

This bill, in compliance with existing law, would require the board, upon the request of the Department of Justice, to provide the address of a specified sex offender.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 18670 of the Revenue and Taxation
2 Code is amended to read:
3 18670. (a) The Franchise Tax Board may by notice, served
4 personally or by first-class mail, require any employer, person,
5 officer or department of the state, political subdivision or agency
6 of the state, including the Regents of the University of California,
7 a city organized under a freeholders' charter, or a political body
8 not a subdivision or agency of the state, having in their
9 possession, or under their control, any credits or other personal
10 property or other things of value, belonging to a taxpayer or to an
11 employer or person who has failed to withhold and transmit
12 amounts due pursuant to this article, to withhold, from the credits
13 or other personal property or other things of value, the amount of
14 any tax, interest, or penalties due from the taxpayer or the
15 amount of any liability incurred by that employer or person for
16 failure to withhold and transmit amounts due from a taxpayer
17 under this part and to transmit the amount withheld to the
18 Franchise Tax Board at the times that it may designate. However,
19 in the case of a depository institution, as defined in Section 19(b)
20 of the Federal Reserve Act (12 U.S.C.A. Sec. 461(b)(1)(A)),
21 amounts due from a taxpayer under this part shall be transmitted
22 to the Franchise Tax Board not less than 10 business days from
23 receipt of the notice. To be effective, the notice shall state the

amount due from the taxpayer and shall be delivered or mailed to the branch or office reported in information returns filed with the Franchise Tax Board, or the branch or office where the credits or other property is held, unless another branch or office is designated by the employer, person, officer or department of the state, political subdivision or agency of the state, including the Regents of the University of California, a city organized under a freeholders' charter or a political body not a subdivision or agency of the state.

(b) (1) At least 45 days before sending a notice to withhold to the address indicated on the information return, the Franchise Tax Board shall request a depository institution to do either of the following:

(A) Verify that the address on its information return is its designated address for receiving notices to withhold.

(B) Provide the Franchise Tax Board with a designated address for receiving notices to withhold.

(2) Once the depository institution has specified a designated address pursuant to paragraph (1), the Franchise Tax Board shall send all notices to that address unless the depository institution provides notification of another address. The Franchise Tax Board shall send all notices to withhold to a new designated address 30 days after notification.

(3) Failure to verify or provide a designated address within 30 days of receiving the request shall be deemed verification of the address on the information return as the depository institution's designated address.

(c) (1) *Notwithstanding Section 8112 of the Commercial Code and Section 700.130 of the Code of Civil Procedure, when the Franchise Tax Board, pursuant to this section or Section 18670.5, issues a levy upon, or requires by notice, any person, financial institution, or securities intermediary, as applicable, to withhold all, or a portion of, a financial asset for the purpose of collecting a delinquent tax liability, the person, financial institution, or securities intermediary, as defined in Section 8102 of the Commercial Code, that maintains, administers, or manages that asset on behalf of the taxpayer, or has the legal authority to accept instructions from the taxpayer as to the disposition of that asset, shall liquidate the financial asset in a commercially reasonable manner within 30 days of the issuance*

1 of the order to withhold. Within five days of liquidation, the
2 person, financial institution, or securities intermediary, as
3 applicable, shall remit to the Franchise Tax Board the proceeds
4 of the liquidation, less any reasonable commissions or fees, or
5 both, which are charged in the normal course of business.

6 (2) If the value of the financial assets to be liquidated exceed
7 the tax liability, the taxpayer may, within 10 days after the
8 service of the order to withhold upon the person, financial
9 institution, or securities intermediary, instruct the person,
10 financial institution, or securities intermediary as to which
11 financial assets are to be sold to satisfy the tax liability. If the
12 taxpayer does not provide instructions for liquidation, the
13 person, financial institution, or securities intermediary shall
14 liquidate the financial assets in a commercially reasonable
15 manner and in an amount sufficient to cover the tax liability, and
16 any reasonable commissions or fees, or both, which are charged
17 in the normal course of business, beginning with the financial
18 assets purchased most recently.

19 (3) For purposes of this section, a financial asset shall
20 include, but not be limited to, an uncertificated security,
21 certificated security, or security entitlement as defined in Section
22 8102 of the Commercial Code, a security as defined in Section
23 8103 of the Commercial Code, or a securities account as defined
24 in Section 8501 of the Commercial Code.

25 (d) Any corporation or person failing to withhold the amounts
26 due from any taxpayer and transmit them to the Franchise Tax
27 Board after service of the notice shall be liable for those
28 amounts. However, in the case of a depository institution, if a
29 notice to withhold is mailed to the branch where the account is
30 located or principal banking office, the depository institution
31 shall be liable for a failure to withhold only to the extent that the
32 accounts can be identified in information normally maintained at
33 that location in the ordinary course of business.

34 SEC. 2. Section 19136.7 is added to the Revenue and
35 Taxation Code, to read:

36 19136.7. (a) No additions to tax shall be made under Section
37 19136 or Section 19142 with respect to any underpayment of an
38 installment for a taxable year, to the extent that the underpayment
39 was created or increased as the direct result of an erroneous levy,

1 erroneous processing action, or erroneous collection action by the
2 Franchise Tax Board.

3 (b) The Franchise Tax Board shall implement this section in a
4 reasonable manner.

5 SEC. 3. Section 19550 of the Revenue and Taxation Code is
6 amended to read:

7 19550. (a) Pursuant to Section 817.5 of the Penal Code, the
8 Franchise Tax Board, upon request from the Department of
9 Justice, a court, or any California law enforcement agency and in
10 a form and manner prescribed by the ~~board~~ *Franchise Tax Board*,
11 shall provide to the Department of Justice, the court, or the law
12 enforcement agency the address of any person represented to be
13 a person for whom there is an outstanding arrest warrant.

14 (b) (1) *Pursuant to Section 290.9 of the Penal Code, the*
15 *Franchise Tax Board, shall, upon request from the Department*
16 *of Justice, provide to the Department of Justice the address of*
17 *any person represented to be a person who is in violation of his*
18 *or her duty to register under Section 290 of the Penal Code.*

19 (2) *This subdivision shall be operative with respect to requests*
20 *made on or after January 1, 2005, pursuant to Section 290.9 of*
21 *the Penal Code, as added by Section 1 of Chapter 127 of the*
22 *Statutes of 2004.*

23 SEC. 4. Section 21018 of the Revenue and Taxation Code is
24 amended to read:

25 21018. (a) A person may file a claim with the board for
26 reimbursement of ~~bank charges incurred by the taxpayer or fees~~
27 ~~imposed on the person by an unrelated business entity as the~~
28 ~~direct result of an erroneous levy, erroneous processing action,~~
29 ~~or erroneous collection action by the board.~~ ~~Bank charges~~
30 ~~Charges that may be reimbursed include a financial institution's~~
31 ~~an unrelated business entity's usual and customary charge for~~
32 ~~complying with the levy instructions and reasonable charges for~~
33 ~~overdrafts that are a direct consequence of the erroneous levy,~~
34 ~~erroneous processing action, or erroneous collection action and~~
35 ~~are paid by the person and not waived or reimbursed by the~~
36 ~~financial institution by the unrelated business entity or otherwise~~
37 ~~reimbursed.~~ Each claimant applying for reimbursement shall file
38 a claim with the board which shall be in such form as may be
39 prescribed by the board. In order for the board to grant a claim,

1 the board shall determine that both of the following conditions
2 have been satisfied:

3 (1) The erroneous levy, *erroneous processing action, or*
4 *erroneous collection action* was caused by an error made by the
5 board.

6 (2) Prior to the *erroneous levy, erroneous processing action,*
7 *or erroneous collection action*, the ~~taxpayer~~ person responded to
8 all contacts by the board and provided the board with any
9 requested information or documentation sufficient to establish
10 the ~~taxpayer's~~ person's position. This provision may be waived
11 by the board for reasonable cause.

12 (3) *The charge or fee has not been waived by the unrelated*
13 *business entity or otherwise reimbursed.*

14 (b) Claims pursuant to this section shall be filed within 90
15 days from the date of the *erroneous levy, erroneous processing*
16 *action, or erroneous collection action*. Within 30 days from the
17 date the claim is received, the board shall respond to the claim. If
18 the board denies a claim, the ~~taxpayer~~ claimant shall be notified
19 in writing of the reason or reasons for the denial of the claim. *The*
20 *board may extend the period for filing a claim under this section.*

21 (c) *Charges and fees that may be reimbursed under the*
22 *authority of this section are limited to the usual and customary*
23 *charges and fees imposed by a business entity in the ordinary*
24 *course of business.*